

institutions): "the conferees intend that the FDIC continue its current practice of paying these expenses prior to paying deposits or other expenses if it determines such payment is required for an orderly resolution of the institution". *Id.*

#### B. The Interim Rule

To prevent any ambiguity on the coverage of administrative expenses of the institution/receiver that were incurred by the institution prior to the appointment of a receiver, the FDIC issued an interim rule published in the **Federal Register** on August 13, 1993 (58 FR 43069). The interim rule clarified that receivers have the authority to pay certain pre-closing obligations of the failed institution as an "administrative expense" under the statute.

The Board of Directors had determined that, in order to ensure an orderly continuation of the handling of closed institutions, it was necessary to clarify the requirements of the statutory amendment relative to the definition and treatment of administrative expenses of the receiver of such institutions. In the preamble to the interim rule the Board of Directors explained the necessity to apply the interim rule to all receiverships subject to the new statutory amendment. The interim rule was amended by a final rule which redesignated §§ 360.1 through 360.3 as §§ 360.2 through 360.4, respectively (58 FR 67662 (Dec. 22, 1993)).

#### The Final Rule

The final rule retains the section added by the interim rule to Part 360 of the FDIC's regulations (12 CFR Part 360) to clarify the priority for administrative expenses contained in the depositor preference statute.

As provided for in the statute, all FDIC-insured institutions for which a receiver is appointed after the date of enactment of the statute will be subject to the priorities provided therein. Pre-appointment expenses that the receiver determines are within the scope of the "administrative expenses" priority will be included within that priority after the enactment date of the statute. As the conferees noted in House/Senate Conference Report, "[p]rior to the implementation of such regulations [to clarify the meaning of the term administrative expenses], it is the conferees' intent that the FDIC continue its current practice of paying these expenses before paying depositors". *Id.*

The current § 360.3 of the FDIC's regulations (12 CFR 360.3) specifies receivership priorities for failed savings associations. These provisions will

continue to apply to such savings associations for which a receiver was appointed on or prior to the effective date of the statutory amendment, August 10, 1993. Liquidations or other resolutions of all insured depository institutions (including savings associations) for which a receiver is appointed after that date are subject to the statutory amendments and interim rule and will be subject to the final rule.

The FDIC received one public comment on the interim rule. The comment was from a national banking and thrift industry trade group who expressed full support for the interim rule.

Because the final rule is unchanged from the interim rule, which became effective on its issuance date of August 13, 1993, the Board of Directors has determined that good cause exists for waiving the 30-day delayed effective date ordinarily required by the Administrative Procedure Act (5 U.S.C. 553). The Board of Directors also has determined that section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) (1994) (RCDRIA) does not apply to the issuance of the final rule.<sup>1</sup> Thus, the final rule will become effective upon its publication date in the **Federal Register**. On that same date, the interim rule will be replaced.

#### List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

#### PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for Part 360 is revised to read as follows:

**Authority:** 12 U.S.C. 1821(d)(11), 1823(c)(4); Sec. 401(h), Pub. L. 101-73, 103 Stat. 357.

2. Section 360.3 is amended by revising paragraph (f) to read as follows:

#### § 360.3 Priorities.

\* \* \* \* \*

(f) Under the provisions of section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), the provisions of this § 360.3 do not apply to any receivership established and liquidation or other resolution occurring after August 10, 1993.

<sup>1</sup> Section 302 of RCDRIA provides that any new regulations and amendments to existing regulations which impose reporting, disclosure or other requirements on insured depository institutions may only take effect on the first day of a calendar quarter unless certain exceptions are satisfied.

3. Section 360.4 is revised to read as follows:

#### § 360.4 Administrative expenses.

The priority for "administrative expenses of the receiver", as that term is used in section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), shall include those necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed insured depository institution. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.

Dated at Washington, D.C., this 27th day of June, 1995.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Jerry L. Langley,**

*Executive Secretary.*

[FR Doc. 95-16671 Filed 7-7-95; 8:45 am]

BILLING CODE 6714-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[FRL-5255-8]

### Extension of Stay of the Reformulated Gasoline Program: Nine Counties in New York, Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In today's action, EPA is extending the previous temporary stay of the reformulated gasoline program requirements in nine opt-in counties in New York, in twenty-eight opt-in counties in Pennsylvania and in two opt-in counties in Maine. In a separate action published June 14, 1995, EPA proposed to approve the requests for opt-out for these specified counties from the States of New York, Pennsylvania, and Maine. Today's action stays the applicability of the RFG requirements for these areas effective from July 1, 1995, until the agency has completed rulemaking on the proposed opt-out for these areas. Although EPA believes that the RFG program provides a highly cost-effective means of reducing ground-level ozone and toxic vehicle emissions, the Agency believes that states should be given the flexibility to choose which programs best meet each state's needs for emissions reductions.

**EFFECTIVE DATE:** June 30, 1995.

**ADDRESSES:** Materials relevant to this notice have been placed in Docket A-94-68. The docket is located at the Air Docket Section (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in room M-1500 Waterside Mall. Documents may be inspected from 8 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Coryell, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW. (6406J), Washington, DC 20460, (202) 233-9014.

**SUPPLEMENTARY INFORMATION:** A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH#919-541-5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

- (M) OMS
- (K) Rulemaking and Reporting
- (3) Fuels
- (9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following titles: XTNDSTAY.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine,  
<N>ew, <L>ist, or <H>elp Selection  
or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

## I. Background

### A. General Background on Reformulated Gasoline Program and Opt-In Process

The reformulated gasoline program is designed to reduce ozone levels in the largest metropolitan areas of the U.S. with the worst ground-level ozone problems by reducing vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program, oxides of nitrogen (NO<sub>x</sub>), another precursor of ozone, are reduced. The 1990 amendments of the Clean Air Act require reformulated gasoline in the nine cities with the highest levels of ozone. Congress also provided the opportunity for states to choose to opt into the RFG program for their other nonattainment areas. EPA issued final rules establishing requirements for RFG on December 15, 1993 (59 FR 7716, February 16, 1994).

The regulation issued in December of 1993 did not include procedures for opting out of the RFG program, because EPA had not proposed and was not ready to adopt such procedures at that time. However, the Agency did indicate that it intended to propose such procedures in a separate rule.

### B. Jefferson County, New York

Jefferson County was included as a covered area in EPA's reformulated gasoline program based on Governor Mario Cuomo's request of October 28, 1991, that this county be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(vi). On November 29, 1994, EPA received a petition from the Commissioner of New York's Department of Environmental Conservation, Mr. Langdon Marsh, to remove Jefferson County, New York, from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Marsh is acting for Governor Cuomo on this matter. The Administrator responded to the State's request in a letter to Commissioner Marsh dated December 12, 1994, stating EPA's intention to grant New York's request as of January 1, 1995, and to conduct rulemaking to implement the opt-out. On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline program requirements in Jefferson County from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995).

This decision was based on the particular circumstances that apply in Jefferson County. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove Jefferson County from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program for this area until the agency completes rulemaking on the proposed opt-out.

### C. The Buffalo and Albany Areas of New York

The Buffalo and Albany ozone nonattainment areas were included as covered areas in EPA's reformulated gasoline program based on Governor Mario Cuomo's request of October 28, 1991, that this county be included under the Act's opt-in provision for ozone nonattainment areas (57 FR 7926, March 5, 1992). See 40 CFR 80.70(j)(10)(i), (iii), (v), and (vii) through (xi). On December 23, 1994, Commissioner Marsh of New York's Department of Environmental Conservation wrote to request opt-out of the Albany and Buffalo ozone nonattainment areas which include the counties of Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, Erie and Niagara. The Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a letter to Commissioner Marsh dated December 28, 1994, stating EPA's intention to grant New York's request as of January 1, 1995, and to conduct rulemaking to implement the opt-out. On December 29, 1995, EPA issued a final rule staying the application of the reformulated gasoline program requirements in these New York counties from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in these counties. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove these New York counties from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program in these counties until the agency completes rulemaking on the proposed opt-out.

### D. Pennsylvania Counties

Twenty-eight counties in Pennsylvania were included as covered areas in EPA's reformulated gasoline program based on Governor Robert P. Casey's request dated September 25, 1991 (56 FR 57986, November 15, 1991).

See 40 CFR 80.70(j)(11) (i) through (xxviii). The counties referred to are the following: Adams, Allegheny, Armstrong, Beaver, Berks, Blair, Butler, Cambria, Carbon, Columbia, Cumberland, Dauphin, Erie, Fayette, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mercer, Monroe, Somerset, Northampton, Perry, Washington, Westmoreland, Wyoming and York. On December 1, 1994, EPA received a petition from Governor Casey to remove these twenty-eight counties from the reformulated gasoline program. The Administrator responded to the State's request in a letter to Governor Casey dated December 12, 1994. In this letter, the Administrator indicated that effective January 1, 1995, and until the formal rulemaking to remove the twenty-eight counties from the list of covered areas is completed, EPA would not enforce the reformulated gasoline requirements in these twenty-eight counties. On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline program requirements in these Pennsylvania counties from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in these twenty-eight counties. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove these twenty-eight counties from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program in these counties until the agency completes rulemaking on the proposed opt-out.

#### *E. Hancock and Waldo Counties in Maine*

Hancock and Waldo Counties were included as a covered areas in EPA's reformulated gasoline program based on Governor John R. McKernan's request of June 26, 1991, that these counties be included under the Act's opt-in provision for ozone nonattainment areas (56 FR 46119, September 10, 1991). See 40 CFR 80.70(j)(5) (viii) and (ix). On December 27, 1994, EPA received a petition from the Acting Commissioner of Maine's Department of Environmental Protection, Ms. Deborah Garrett, to remove Hancock and Waldo Counties in Maine from the list of areas covered by the requirements of the reformulated gasoline program. EPA understands that Commissioner Garrett is acting for Governor McKernan in this matter. The Assistant Administrator for Air and Radiation, Mary Nichols, responded to the state's request in a

letter to Commissioner Garrett, dated December 27, 1994, stating EPA's intention to grant Maine's request, and conduct rulemaking to implement the opt-out. On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline program requirements in these Maine counties from January 1, 1995 until July 1, 1995 (60 FR 2696, January 11, 1995). This decision was based on the particular circumstances that apply in these two counties. On June 14, 1995, EPA published a notice of proposed rulemaking proposing to remove Hancock and Waldo Counties from the areas covered by the reformulated gasoline program (60 FR 31269, June 14, 1995). In the same notice, EPA also proposed to extend the stay of the reformulated gasoline program in these counties until the agency completes rulemaking on the proposed opt-out.

#### **II. Extension of Stay Removing the Nine New York Counties, the Twenty-Eight Counties in Pennsylvania, and Two Counties in Maine From the List of Areas Covered by the Reformulated Gasoline Requirements as of July 1, 1995**

On December 29, 1994, EPA issued a final rule staying the application of the reformulated gasoline regulations for certain areas that had opted in to the reformulated gasoline program. 60 FR 2696 (January 11, 1995). This stay applied to Jefferson County and the Albany and Buffalo nonattainment areas of New York, the twenty-eight opt-in counties in Pennsylvania, and Hancock and Waldo Counties in Maine. It stayed the regulations in these areas effective January 1, 1995 until July 1, 1995.

EPA believes that the Act authorizes states to opt out of the reformulated gasoline program. EPA has proposed and, absent new information indicating otherwise, believes it will be appropriate to grant the requests by the governors considering the lack of adverse air quality impacts,<sup>1</sup> the requests by the governors, the lack of reliance on reformulated gasoline in the states' State Implementation Plans, and the reasonable lead time provided to industry. In light of the current rulemaking on the opt-out requests for these areas and the lack of any adverse environmental effects, the likelihood the rulemaking will conclude in the opt-out of these areas, and the severe disruption in starting the reformulated gasoline program in these areas on short notice,

<sup>1</sup> Several of the areas have requests pending before the agency for redesignation to attainment status. The other areas are expected to submit such requests.

EPA finds it would be inappropriate to impose the reformulated gasoline program requirements in these areas during the short time needed to complete opt-out rulemaking.

EPA is extending the stay to avoid the serious disruption to the gasoline distribution system, the regulated industry, and the public, which would be caused by a temporary imposition of the reformulated gasoline requirements in these areas. It is necessary that all parties involved have the certainty and stability needed for successful implementation. EPA believes that these circumstances warrant an extension of the previous stay of the reformulated gasoline requirements in these areas until EPA takes final action on the proposed opt-outs. That will provide adequate time to complete rulemaking and take final action on these opt-out requests.

#### **III. Response to Comments**

A comment period was set for the period of June 14 through June 28, 1995. During that period two comments were received.

One commenter representing fuel oxygenate producers objects to EPA's proposed extension of the stay, arguing that EPA does not have authority under section 211(k) of the Act to stay the effective date of these opt-in areas. According to this commenter, section 211(k)(6)(A) provides only limited discretion in establishing the effective date for an opt-in, and any additional extension of this effective date must meet the requirements of section 211(k)(6)(B). That provision authorizes an extension of the effective date set under section 211(k)(6)(A) for up to two years, if after consultation with the Department of Energy, EPA determines that there is insufficient domestic capacity to produce reformulated gasoline. In addition, EPA must issue an extension for areas with lower ozone classifications before higher ones. Not having met these requirements, the commenter argues that the extension is not authorized under section 211(k)(6)(A) or (B). The commenter also believes that EPA's reliance on *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) is misplaced, and that section 211(k) does not otherwise authorize the proposed stay.

This commenter has misinterpreted EPA's view on statutory authority. The temporary stay issued in December 1994 and the stay proposed in June 1995 are not extensions of the effective date under section 211(k)(6)(A) or (B). Those provisions basically address when the program will first go into effect for an

opt-in area. They do not address whether and when an area may opt-out of the program.

As noted in the proposal, EPA believes that it has authority to allow an area to opt out after it has opted in, under reasonable conditions related to a state's air quality planning and the need for reasonable lead time for affected industries. This is a reasonable interpretation of EPA's authority, based on the delegation by Congress of rulemaking authority in sections 211(k)(1) and 301(a). This includes the authority to allow an area to permanently opt out of the reformulated gasoline program. The stay issued in this final rule is a much more limited exercise of this authority—it allows an area to be excluded from the reformulated gasoline program for a limited time period, pending the rulemaking needed to finally act on the opt-out request.

EPA proposed to allow these areas to opt-out, and explained the legal, factual, and policy reasons supporting its proposal. Given the clear possibility that EPA will exclude these areas from the reformulated gasoline program based on their opt-out requests, it would be a serious and needless disruption of the gasoline market and the reformulated gasoline program to now implement the prohibition of section 211(k)(5) and require the regulated parties to market reformulated gasoline for the short period of time needed to act on this proposal. Under these circumstances, temporarily excluding them from the program pending action on the proposal is a limited and proper exercise of EPA's authority to allow an area to opt-out of the program indefinitely.

One commenter representing the petroleum industry strongly supports the stay extension. This commenter believes that it would not be in the public's interest to introduce the reformulated gasoline program on short notice. Considering that EPA has proposed to approve the opt-out requests of New York, Pennsylvania, and Maine, the commenter believes a temporary reformulated gasoline program in these counties for a few months would not be warranted.

#### IV. Effective Date

Based on the July 1, 1995, expiration of the prior stay, and the disruption that would be caused if the reformulated gasoline program was reinstituted in these areas for a short time, EPA finds there is good cause to make this rule effective upon signature. 5 U.S.C. 553(d). This rule is effective on June 30, 1995.

#### V. Environmental Impact

The stay is not expected to have any adverse environmental effects. The reformulated gasoline program is currently not applicable to these areas and the stay continues the status quo in these areas during rulemaking.

#### VI. Economic Impact

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This stay is not expected to result in any additional compliance cost to regulated parties and, in fact, is expected to decrease compliance costs to the industry and decrease costs to consumers in the affected areas.

#### VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget (OMB) clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This rule does not create any new information requirements or contain any new information collection activities.

#### VIII. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the stay promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action extends a stay on the application of the reformulated gasoline program in certain areas, pending agency rulemaking on the opt-out requests for these areas. The stay imposes no new Federal requirements, and in fact relieves an otherwise applicable requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### IX. Statutory Authority

The statutory authority for the action in this rule is granted to EPA by section 211 (c) and (k), and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a).

#### List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: June 30, 1995.

**Fred Hansen,**  
Acting Administrator.

For the reasons set out in the preamble, 40 CFR part 80 is amended as follows:

#### PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.70 is amended by revising the introductory text of paragraph (j) to read as follows:

#### § 80.70 Covered areas.

\* \* \* \* \*

(j) The ozone nonattainment areas listed in this paragraph (j) are covered areas beginning on January 1, 1995, except that those areas listed in paragraphs (j)(5) (viii) and (ix), (j)(10) (i), (iii), and (v) through (xi) and (j)(11) of this section shall not be covered areas prior to EPA taking final action on the proposal to remove these areas as covered areas.

\* \* \* \* \*

[FR Doc. 95-16825 Filed 7-7-95; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Part 302

[FRL-5255-5]

### Reportable Quantity Adjustments; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correction to final rule.

**SUMMARY:** This document corrects errors in the amendatory language of a final rule published on June 12, 1995 (60 FR 30926). The final rule made changes to reportable quantities for hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act.

**EFFECTIVE DATE:** July 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/UST, Superfund, and EPCRA Hotline at 800/424-9346 (in the Washington, DC metropolitan area, contact 703/412-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/553-7672 (in the Washington, DC metropolitan area, contact 703/486-3323); or Mr. Jack Arthur, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or at 703/603-8760.

Dated: June 30, 1995.

**Timothy Fields, Jr.,**

*Acting Assistant Administrator.*

For the reasons set out in the preamble, FR Doc. 95-13787, published at 60 FR 30926 (June 12, 1995) is corrected as follows:

#### § 302.4 [Corrected]

1. On page 30938, column 3, amendatory instruction 4 is corrected to read as follows:

4. Table 302.4 in § 302.4 is amended by adding the following new entries in alphabetical order; and by revising the entries for "Benzene, dimethyl", "Phenol, methyl-", and "Xylene (mixed)" and their subentries; and by revising under the heading "Unlisted Hazardous Wastes Characteristics:

Characteristic of Toxicity:" the entries for "o-Cresol (D023)", "m-Cresol (D024)", "p-Cresol (D025)", and "Cresol (D026)"; and by revising the entries for "F004", "F025", "F037", "F038", "K088", "K090", and "K091"; and by adding footnote "a" to the entry for "Benzene"; and by removing the entries for "Cresol(s)" and "Cresylic acid" and their subentries, as set forth below:

2. On page 30944, column 1, amendatory instruction 5 is corrected to read as follows:

5. Table 302.4 in § 302.4 is also amended by revising the following entries; and by adding new entries in alphabetical order for "Antimony Compounds", "Aroclors" and its subentries, "Arsenic Compounds (inorganic including arsine)", "Beryllium Compounds", "Cadmium Compounds", "Chlorinated camphene", "1-Chloro-2, 3-epoxypropane", "Chloromethane", "Chromium Compounds", "Cyanide Compounds", "DEHP", "Dibromomethane", "Dichloromethane", "1,4-Diethyleneoxide", "Dimethyl aminoazobenzene", "Ethyl chloride", "Hexone", "Hydrogen phosphide", "Iodomethane", "Lead Compounds", "Lindane (all isomers)", "MEK", "Mercury Compounds", "2-Methyl aziridine", "Nickel Compounds", "PCBs" and its subentries, "PCNB", "Quinone", "Quintobenzene", "Radionuclides (including radon)", "Selenium Compounds", "TCDD", "2,4-Toluene diamine", "2,4-Toluene diisocyanate", and "Urethane", as set forth below:

3. On page 30959, preceding Appendix A to § 302.4, add the following amendatory instruction to read as follows:

5a. Appendix A to § 302.4 is amended by revising the following entries, as set forth below:

[FR Doc. 95-16754 Filed 7-7-95; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 414

[BPD-494-F]

RIN 0938-AD65

### Medicare Program; Payment for Durable Medical Equipment and Orthotic and Prosthetic Devices

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule addresses comments received on an interim final rule with comment period published on December 7, 1992. The interim final rule implemented section 4062(b) of the Omnibus Budget Reconciliation Act of 1987. It specified that payment under the Medicare program for durable medical equipment (DME), prosthetics, and orthotics furnished on or after January 1, 1989 is limited to the lower of the actual charge for the equipment or the fee schedule amount established by the carrier. This final rule describes amendments to the methods for computing fee schedules covering the six classes of DME and how they are updated in subsequent years in accordance with sections 13542 through 13546 of the Omnibus Budget Reconciliation Act of 1993.

**DATES:** These final regulations are effective August 9, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Sharon Hippler—(410) 966-4633

(Coverage Issues)

William Long—(410) 966-5655

(Payment Issues)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The provisions of sections 1833 and 1842 of the Social Security Act (the Act) set forth the general payment authority for most physician and other medical and health services furnished under Part B of the Medicare program. Section 1834 sets forth the 6 classes of DME and specifies that payment for these items is limited to 80 percent of the lesser of the actual charge or a fee schedule amount established by each Medicare carrier.

We published an interim final rule on December 7, 1992 (57 FR 57675) that set forth the methods for computing fee schedules for the six classes of DME effective for services furnished on or after January 6, 1993. The interim rule also described how the fee schedules are updated. The December 1992 rule explained in detail the various legislative changes that led to its publication (57 FR 57676).

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA 93, Public Law 103-66), revised the statutory provisions upon which the DME payment rules that appeared in the December 1992 final rule were based. We are including these provisions in this final rule since the revisions are not discretionary but follow the explicit language contained in sections 13542 through 13546.

A summary of the provisions of these sections of OBRA 93 follows:

- Section 13542 amends sections 1834(a)(2), (a)(3), (a)(8), and (a)(9) of the